

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
LAS CRUCES DIVISION**

FERNANDO GUTIERREZ-PONCE
and JARAD WILLIAMS-MILLER,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

FTS INTERNATIONAL SERVICES,
LLC,

Defendant.

CIVIL ACTION NO.
2:18-CV-00786-WJ/SMV

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Plaintiffs Fernando Gutierrez-Ponce and Jarad Williams-Miller (“Plaintiffs”) and Defendant FTS International Services, LLC (“Defendant”) file this Joint Motion for Approval of Settlement Agreement.

I. BACKGROUND

1. This action was filed in the District of New Mexico by Plaintiffs on August 17, 2018 under the Fair Labor Standards Act (“FLSA”) and the New Mexico Minimum Wage Act (“NMMWA”). Plaintiffs alleged that they were denied correct overtime pay.
 2. Defendant answered and denied the material allegations in Plaintiffs’ complaint.
 3. The parties engaged in settlement negotiations over the course of many weeks.
 4. Defendant has denied, and continues to deny, Plaintiffs’ allegations. Nonetheless, without admitting or conceding any liability or damages, and solely to avoid the burden, expense and uncertainty of continuing to litigate Plaintiffs’ claims, Defendant has agreed to settle Plaintiffs’

claims, and Plaintiffs have agreed to compromise their claims on the terms and conditions set forth in the Settlement Agreement and Release of Claims submitted for filing under seal as Exhibit A to the Parties' joint motion for leave to file the Agreement under seal (the "Agreement").

5. The parties recognize that the outcome of this action is uncertain and that achieving a final resolution through litigation requires substantial risk, discovery, time, and expense.

6. To determine how best to serve the interests of the parties, the parties and their counsel have investigated and evaluated the facts and law relating to the claims asserted in this action. After balancing the benefits of settlement with the costs, risks, and delay of continued litigation, the parties and their counsel believe the settlement as provided in the Agreement is in the best interests of the parties and represents a fair, reasonable, and adequate resolution of this matter.

7. This settlement is the result of arm's-length bargaining by competent counsel with extensive wage and hour experience, and a high level of familiarity and understanding of the relevant facts and legal issues applicable to these cases. Plaintiffs and Defendant believe that the settlement is fair and reasonable. Plaintiffs and Defendant also believe that the settlement resolves bona fide disputes between the parties.

II. ARGUMENT AND AUTHORITY

8. FLSA claims may be compromised after the court reviews and approves a settlement in a private action for back wages. *Lynn's Food Stores, Inc. v. United States Dep't of Labor*, 649 F.2d 1350, 1353 (11th Cir. 1982).

9. Many courts have acknowledged that the parties are generally in a better position than the court to determine whether a settlement agreement under the FLSA is fair and reasonable.

See, e.g., Bonetti v. Embarq Mgmt. Co., 715 F. Supp. 2d 1222, 1227 n.6 (M.D. Fla. 2009). Moreover, if the parties are “represented by competent counsel in an adversary context,” as here, “the settlement they reach will, almost by definition, be reasonable.” *Id.* at 1227 n.6. Finally, there is a “strong presumption in favor of finding a settlement fair.” *Rastellini v. Amy Charles, Inc.*, No. 6:08-cv-255-ORL-28GJK, 2009 WL 2579316 at *2 (M.D. Fla. Aug. 17, 2009) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)).

10. The parties’ settlement of these claims is the result of a bona fide compromise between them on a variety of disputes of law and fact. The parties stipulate that they are resolving the matter in order to avoid the cost and time of litigation, as well as the risks associated with continued litigation. Defendant admits no fault or liability in this matter.

11. The settlement negotiated and reached by the parties reflects a fair and reasonable compromise of the disputed issues. All parties were counseled and represented by their respective attorneys throughout the litigation and settlement process. The parties attest to the fairness and reasonableness of their amicable settlement. Thus, the parties respectfully request that the Court approve the settlement and dismiss Plaintiffs’ claims with prejudice.

III. CONCLUSION AND PRAYER

For the foregoing reasons, the parties jointly request that the Court approve the Agreement and dismiss Plaintiffs’ claims with prejudice, with each party to bear its own costs.

Respectfully submitted,

/s/ Edmond S. Moreland, Jr.

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that on April 18, 2019, I electronically transmitted the foregoing document to the Clerk of Court using the ECF system of filing, which will transmit a Notice of Electronic Filing to all counsel of record.

/s/ Edmond Moreland

Edmond Moreland

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